Bay Counties District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO *and* Northern California Drywall Contractors Association and Laborers Union Local 261, Laborers International Union of North America, AFL–CIO

Painters & Decorators Union, Local No. 4, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO *and* Northern California Drywall Contractors Association and Laborers Union Local 261, Laborers International Union of North America, AFL–CIO. Cases 20–CD–584 and 20–CD–585

December 7, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Northern California Drywall Contractors Association, herein called the Employer, alleging that Bay Counties District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO, herein called the Carpenters, and Painters & Decorators Union, Local No. 4, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO, herein called the Painters, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring certain employer-members of the Employer to assign certain work to employees they represent rather than to employees represented by Laborers Union Local 261, Laborers International Union of North America, AFL–CIO, herein called the Laborers.

Pursuant to notice, a hearing was held before Hearing Officer Miguel Gonzalez on February 2 and 16 and March 10 and 11, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The record discloses that the Employer is a multiemployer association with its principal place of business in the State of California. The approximately 100 members of the Employer are engaged in the business of drywall subcontracting in the building and construction industry in 46 counties in northern California. During the past year, Anning-Johnson Company, a member of the Employer, purchased materials having a value in excess of $50,000 from outside the State of California. In *Millwrights Union Local 102, United Brotherhood of Carpenters & Joiners of America, AFL–CIO (Frederick Meiswinkel, Inc. d/b/a Meiswinkel Interiors)*, 260 NLRB 972 (1982), the Board found that Meiswinkel, a member of the Employer, was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. In view of the foregoing, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

We find that the Carpenters, the Painters, and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

As noted above, the Employer consists of approximately 100 members engaged in drywall subcontracting in 46 counties in northern California. The Employer is also a part of the statewide California Drywall Contractors Association (CDCA). The Carpenters, whose jurisdiction includes five counties in and around San Francisco, is affiliated with the statewide California State Council of Carpenters. The record does not disclose the precise boundaries of the Painters jurisdiction, but the jurisdiction of Painters District Councils 8, 16, and 33, which negotiate on behalf of the Painters, includes 20 northern California counties. The jurisdiction of the Laborers is restricted to the city and county of San Francisco.

CDCA is a party to a collective-bargaining agreement, known as the Drywall/Lathing Master Agreement, with the California State Council of Carpenters. Addendum A of the Drywall/Lathing Master Agreement, negotiated by the Employer, contains provisions applicable only to the 46 counties in northern California. The Employer is also a party to a collective-bargaining agreement, known as the Bay Area Drywall Finishers Joint Agreement, with Painters District Councils 8, 16, and 33.

Ronald Becht, the Employer's executive director, testified that, in September 1981, employer-member Meiswinkel informed him that the Laborers was picketing Meiswinkel's jobsite at 101 Lombard Street in San Francisco. Becht then notified representatives of the Carpenters and the Painters that the Laborers was claiming the "clean-up" or "scrapping" work which follows both the installation of drywall and the taping of the joints between drywall pieces. The Carpenters representative, Joe Grigsby, claimed the scrapping work which follows the installation of drywall, while the Painters representative, John Davidson, claimed the scrapping work which follows the taping process. Grigsby and Davidson both indicated that they would visit the jobsite and try to resolve the problem. Becht subsequently learned that the Laborers had ceased to picket the jobsite, and that the Northern California District Council of Laborers had filed a grievance concerning the work. A hearing was held pursuant to the District Council's contract with the Association of General Contractors, but the record does not disclose the results of the proceeding.

In September 1981, soon after the events at 101 Lombard Street, a dispute arose at the Opera Plaza jobsite on Van Ness Avenue in San Francisco. Gene Warren, vice president and district manager of Anning-Johnson, testified that he received notice from a field superintendent that the Laborers was on the jobsite claiming scrapping and cleanup work. A meeting was subsequently arranged and was attended by Warren, Grigsby, representatives of the general contractors, and three representatives from the Laborers. The Laborers asserted that if the work of scrapping and cleanup of drywall materials was not assigned to its members it would picket the jobsite on the following Monday.

In a telephone conversation on or about October 20, 1981, Becht asked Carpenters Representative Jim Green for the Carpenters' position with respect to the disputed work. Green responded that, if "drywall contractors" did not use carpenters to perform the work, then the Carpenters "would consider picketing the jobs." On or about October 27, 1981, John Davidson told Becht that the cleanup of taping materials had traditionally been performed by painters, and that if the work were assigned differently the Painters "would consider the possibility of picketing the job." The record does not indicate that the statements of Green and Davidson were made with reference to any particular jobsite.

In February 1982, Becht also received notice that the Laborers had threatened to picket a San Francisco jobsite where work was being performed by Northern California Wallboard, Inc., a member of the Employer. The picketing threat concerned the scrapping or cleanup of drywall debris at the jobsite. Robert Southward, chief estimator and project manager for Meiswinkel, testified that the Laborers picketed Meiswinkel's jobsite at the Moscone Center in San Francisco.

B. *The Work in Dispute*

The dispute encompasses two different types of scrapping or cleanup work.[1] The work which is claimed by the Carpenters and the Laborers is the scrapping or cleanup of the debris created by the installation of drywall. The work which is claimed by the Painters and the Laborers is the scrapping or cleanup of taping materials left over from the process of taping the joints between pieces of drywall.[2]

C. *The Contentions of the Parties*

The Employer contends that the work of scrapping or cleanup which follows the installation of drywall should be awarded to employees represented by the Carpenters, and that the work of scrapping or cleanup which follows the taping process should be awarded to employees represented by the Painters. The Employer's contention is based on the collective-bargaining agreements, employer preference and past practice, economy and efficiency of operations, and area and industry practice. Because the dispute over the work has already arisen at several locations, the Employer further contends that the dispute is likely to recur and that the Board should issue a broad order encompassing the 46 northern California counties where employer-members of the Employer do business.

The Carpenters and the Laborers were represented by the same counsel in this proceeding. The brief filed on behalf of the Carpenters and the Laborers asserts that the Board does not have jurisdiction to resolve this dispute, that the record is insufficient for the Board to make a determination, and that the notice of hearing should be quashed; or that, alternatively, the proceeding should be remanded for a further hearing.

The Carpenters and the Laborers initially contend that the notice of hearing, which defined the dispute as "the assignment by any employer member" of the Employer of the disputed work, improperly exceeded the scope of the charges,

[1] Becht testified that "scrapping" and "clean-up" are synonymous terms traditionally used in the trade to describe the process of removing the debris from a jobsite. Gene Warren and Robert Southward also testified that "scrapping" refers to the cleanup of debris.

[2] The geographical scope of the dispute is discussed *infra*.

which referred to a specific jobsite and specific employers. The Carpenters and the Laborers therefore contend that the parties were not given sufficient notice that the work of an entire multiemployer association was at issue. Contrary to these contentions, we note that the charges were phrased in broad terms to allege that at "material times within the past six months" the Carpenters and the Painters had threatened "employer members" of the Employer with respect to the assignment of the disputed work. Accordingly, we find no merit to the contention of the Carpenters and the Laborers that there was insufficient notice that the scope of the dispute may have involved more than specific jobsites.

We also find no merit to the contention of the Carpenters and the Laborers that the issues in this proceeding were not adequately litigated and that there is insufficient evidence for the Board to make a determination. As noted above, all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The Employer presented substantial evidence in support of its contentions, and we cannot find that the issues were inadequately litigated merely because counsel for the Carpenters and the Laborers chose to present no witnesses and to introduce no exhibits.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

On or about October 20, 1981, as noted above, Jim Green, a representative of the Carpenters, told the Employer that, if "drywall contractors" did not use carpenters to perform the scrapping or cleanup work which follows the installation of drywall, then the Carpenters "would consider picketing the jobs." On or about October 27, 1981, Representative John Davidson of the Painters told the Employer that the cleanup of taping materials had traditionally been performed by painters, and that if the work were assigned differently the Painters "would consider the possibility of picketing the job." In view of the foregoing, we conclude that there is reasonable cause to believe that Section 8(b)(4)(ii)(D) has been violated.

The Carpenters and the Laborers contend that the Carpenters has disclaimed its portion of the disputed work, and that the Carpenters and the Laborers have reached an "understanding" whereby the work will be performed by employees represented by the Laborers. The Carpenters and the Laborers further contend that all three Unions have reached an agreement permitting painters to remove taping materials from their "immediate work area" to "the middle of the work floor," at which point laborers would collect and dispose of the materials. Contrary to these contentions, we find no testimonial or documentary evidence of any such disclaimer or agreements. The record contains only the bare assertions of the Carpenters and the Laborers counsel that agreements were reached between the three Unions and that such agreements "could be put on a piece of paper." We do not find worthy of belief such a disclaimer based on the mere assertion of counsel representing two of the competing Unions. Such common representation implies a conflict of interest where the interests of the Carpenters and the employees it represents are at odds with the interests of the Laborers and the employees it represents concerning the disputed work.[3] Moreover, counsel clearly had no authority to disclaim work for the Painters.

It is also contended by the Carpenters and the Laborers that the various collective-bargaining agreements provide for the voluntary adjustment of jurisdictional disputes. However, we note that no Laborers contract was introduced into evidence and that the current Painters contract contains no provision for the resolution of such disputes. The current Drywall/Lathing Master Agreement between CDCA and the California State Council of Carpenters does contain a provision concerning jurisdictional disputes, but there is no indication in the record that the Painters and the Laborers are bound to this provision of the agreement. Moreover, the provision "does not give an employer any role in jurisdictional dispute resolutions and does not obligate signatory carpenter unions to resolve such disputes in a specified manner."[4]

In view of the foregoing, we find that there has been no effective disclaimer and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to various factors.[5]

[3] See *Frederick Meiswinkel, Inc. d/b/a Meiswinkel Interiors, supra.*

[4] *Frederick Meiswinkel, Inc. d/b/a Meiswinkel Interiors, supra* at 974.

[5] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL–CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[6]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

As noted above, CDCA and the California State Council of Carpenters are parties to the Drywall/Lathing Master Agreement, which was in effect until July 31, 1982. Article I, section 1, provides that the work of "scrapping" is covered by the agreement. Addendum A of the agreement, which covers 46 counties in northern California, sets forth the rates of pay for "scrappers" and clean-up men."

Additionally, the Employer and Painters District Councils 8, 16, and 33 are parties to the Bay Area Drywall Finishers Joint Agreement. Paragraph 9 of the second clause provides that the "clean-up of all materials and debris" at a construction site is work which is covered by the agreement.

No contracts involving the Laborers were introduced into evidence, and Becht testified that the Employer has no contracts with the Laborers.

In view of the foregoing, we find that the collective-bargaining agreements favor an award to employees represented by the Carpenters of the work of the scrapping or cleanup which follows the installation of drywall. We also find that the agreements favor an award to employees represented by the Painters of the work of the scrapping or cleanup which follows the taping of the joints between pieces of drywall.

2. Employer and area practice and employer preference

Becht testified that the Employer's members have traditionally assigned to carpenters the scrapping or cleanup work involved in the installation of drywall, and that the Employer's members have traditionally assigned to painters the scrapping or cleanup work involved in the taping process. Becht further testified that to his knowledge such work had never been assigned to employees represented by the Laborers.

Gene Warren testified that it has always been the practice of Anning-Johnson to assign the disputed work to carpenters and painters. Robert Southward of Meiswinkel testified that that Employer makes the same assignment and has never assigned the disputed work to laborers.

In light of the above, we find that the factor of employer practice favors an award of the disputed work to employees represented by the Carpenters and the Painters. We further find that the factor of employer preference favors an award to employees represented by the Carpenters and the Painters. Becht, Warren, and Southward expressly testified that it was their preference to assign the disputed work in such a manner. However, there is no evidence as to area practice other than the practices of these Employers.

3. Economy and efficiency of operation

Becht testified that there is often not enough scrapping of cleanup work to keep an employee occupied for 8 hours, and that consequently an employee represented by the Laborers performing such work would be forced to remain idle for a substantial portion of the day. He further indicated that it would be more efficient to use employees represented by the Carpenters and the Painters, since they perform other work on the jobsite during the course of a day. Becht's testimony in this regard was uncontradicted and was, in fact, corroborated by Robert Southward of Meiswinkel. We therefore find that this factor favors an award of the disputed work to employees represented by the Carpenters and the Painters.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Carpenters are entitled to perform the work of the scrapping or cleanup which follows the installation of drywall, and that employees who are represented by the Painters are entitled to perform the work of scrapping or cleanup which follows the taping of the joints between pieces of drywall. We reach this conclusion relying on the collective-bargaining agreements, the Employer's preference and past practice, and economy and efficiency of operation. In making this determination, we are awarding the work in question to employees who are represented by the Carpenters and the Painters, but not to those Unions or their members.

Scope of the Determination

The Employer contends that the Board should issue a broad award to employees represented by any affiliate of the Carpenters and the Painters of all of the disputed work performed by the Employer's members in the 46 northern California counties in which employer-members do business. Although we agree that an award covering more than the specific jobsites herein is warranted, we do not find

[6] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

that the extensive order sought by the Employer is appropriate.

In certain circumstances, the Board will issue an award broad enough to encompass the geographical area in which an employer does business and in which the jurisdictions of the competing unions coincide.[7] In determining the appropriateness of such an award, the Board considers whether the dispute has been a continuing source of controversy and is likely to recur, and determines whether there is a proclivity to engage in proscribed conduct on the part of the union representing the employees who are not being awarded the disputed work.[8] We find that the dispute herein is likely to recur, since the Painters and the Carpenters made general threats, thereby implying their willingness to picket other jobsites, and since the Laborers have already engaged in threats and picketing at four jobsites. We also find that this conduct by the Laborers is sufficiently extensive to demonstrate a proclivity on its part to engage in proscribed conduct in order to obtain the disputed work.[9]

Contrary to the Employer's contentions, however, we shall view the competing unions as being the Laborers, the Painters, and the Carpenters. It was those three labor organizations, rather than their affiliates such as the Northern California District Council of Laborers[10] and the California State Council of Carpenters, which engaged in the threats and picketing.[11] Thus, although claims for the type of work in dispute may arguably have encompassed a broader jurisdiction, all of the specific jobsites which were the subjects of actual confrontations between the competing unions are located within San Francisco, the territorial jurisdiction of the Laborers, and not in other areas encompassed within the jurisdiction of affiliates of the Laborers. We also note that, although the threats of the Carpenters and the Painters did not refer to any specific jobsite, there is no evidence that those threats were intended to cover an area broader than the jurisdiction of those two unions. Therefore, in the absence of evidence to the contrary, we interpret the threats of the Carpenters and the Painters to be limited to threats to take action within their own jurisdictions.

In view of the foregoing, our determination will cover the assignment of the disputed work in the area where the Employer's members do business and in which the geographical jurisdictions of the Carpenters and the Laborers, and the Painters and the Laborers, coincide.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and on the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees who are represented by the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, are entitled to perform the work of the scrapping or cleanup which follows the installation of drywall, on work performed by employer-members of the Northern California Drywall Contractors Association, wherever the jurisdictions of the Bay Counties District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and Laborers Union Local 261, Laborers International Union of North America, AFL-CIO, coincide.

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[7] *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 155 (Allied-McCarty Supply Co., Inc., d/b/a Allied/Hussman)*, 222 NLRB 796, 800 (1976).

[8] *International Brotherhood of Electrical Workers, AFL-CIO, Local 104 (Standard Sign & Signal Co., Inc.; et al.)*, 248 NLRB 1144, 1148 (1980).

[9] Although the Laborers was not named as a charged party in the charges filed by the Employer, we find that its conduct is relevant to determining the scope of the award. In *Standard Sign & Signal Co., Inc.; et al., supra* at 1148, the Board considered whether there was a proclivity to engage in proscribed conduct on the part of the union representing the employees who were not being awarded the work, even though that union was not a charged party.

[10] As noted above, a grievance was filed by the Northern California District Council of Laborers, on behalf of the Laborers, with respect to the disputed work at the 101 Lombard Street jobsite. In December 1981, the Northern California District Council of Laborers also filed a grievance, on behalf of Laborers Local 304, with respect to the scrapping of drywall materials at the Trans-Pacific Center jobsite in Oakland, California. In the circumstances of this case, we find that these grievances do not warrant expanding the scope of the award. We find that there is insufficient evidence to conclude that these grievances constitute the type of coercive conduct which would ordinarily give rise to a finding of reasonable cause that Sec. 8(b)(4)(D) has been violated. See *Sheet Metal Workers' International Association, Local Union No. 49 (Los Alamos Constructors, Inc.)*, 206 NLRB 473, 476-477 (1973); *National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.)*, 255 NLRB 372, 374 (1981). A grievance may be unlawful if it is filed as a weapon to satisfy a jurisdictional claim and not in good faith to enforce a collective-bargaining agreement. *Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Pacific Maritime Association)*, 224 NLRB 801, 805-807 (1976). But here, the record reflects that grievances were filed by the Northern California District Council of Laborers pursuant to its contract with the Association of General Contractors. Because that contract was not introduced into evidence, we do not know what its provisions are with respect to the disputed work, and therefore we cannot say that the grievances were not filed in good faith to enforce the terms of the contract. In this respect, this case is distinguishable from *Pacific Maritime Association*. We also note that, in connection with the Oakland jobsite, there is no evidence of any threats or picketing. In view of the foregoing, we shall not view the Northern California District Council of Laborers Local 304 as being competing unions for the work in dispute in this proceeding.

[11] The record discloses that John Davidson, who made the Painters threat against the Employer is a representative of both Painters District Council No. 8 and Painters Local No. 4. From the record evidence, it is not clear in which capacity he made the threat. However, we will not view Painters District Council No. 8 as one of the competing Unions, since it was not joined as a party to this proceeding. See *Sheet Metal Workers Local Union No. 85 (Kewaunee Scientific Equipment Corporation)*, 198 NLRB 771, 773-774 (1972).

Employees who are represented by Painters & Decorators Union, Local No. 4, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, are entitled to perform the work of the scrapping or cleanup which follows the process of the taping of joints between pieces of drywall, on work performed by employer-members of the Northern California Drywall Contractors Association, wherever the jurisdictions of Painters & Decorators Union, Local No. 4, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, and Laborers Union Local 261, Laborers International Union of North America, AFL-CIO, coincide.